
From: Sivan, Shaked
Sent: Friday, January 5, 2024 12:57 PM
To: Team Hwang
Subject: 2024.01.05 Call with USAO (Privileged and Confidential)

Participants

SDNY:

MP
AR
SR
AT

Friedman Kaplan:

TH
MM

Kramer Levin:

BB
JE
SS

[1] The parties continued their discussion about expert disclosures and trade dates:]

USAO: The USAO looked back at the transcript of Wednesday's hearing and do not see where it says they have to produce anything immediately. Hellerstein talks about making a schedule for a supplemental production, and Jordan asked him to include analyses. He said yes, that should be part of supplemental disclosures.

Setting that aside, they have decided they will produce today some material to us that will help us in the interest of helping us prepare and being open. They are working on getting them and think they will have them uploaded at the end of today. They will be current draft material underlying the VAR analysis, probit analysis, and price impact analysis. They are not, as you can expect, in final form, as they are continuing to tweak them and experts are working on them.

KL appreciates that.

USAO will send that and they will have further dialogue. They also will send draft charts (not final material).

USAO: Reading the transcript, the judge expects us to exchange more in-depth disclosures. We will be reasonable, we understand there will be tweaks and changes to exhibits.

KL understands that.

The parties agree to 1/26.

MM: We also talked about the government identifying specific trades that fall into categories you allege are manipulative. Is that disclosure on 26th or today?

USAO: They will be producing today a couple of tables where they will identify same day trading, end of day trading, and another category from indictment that Andrew had forgotten.

There are also summary statistics run over a model specified, from roughly October 2020 to late March 2021. The precise dates are included in summary information that we will see. The nature of the model is not that it was a particular date or trade. They run across a ticker over a time period.

KL: We want to review what you produce but it's along the lines of what we were discussing.

KL proposes reports on January 26 and opposition on February 2.

USAO open to that way of proceeding. They are also mindful of the judge's reaction to Daubert briefing. He was not interested in Daubert briefing to the extent of these experts are not qualified. The USAO did not take that to say he was not open to motions addressing other issues in our briefs (beyond the scope, intent, etc.).

KL: We need to make motions that we think are legitimate and also need to preserve those issues. We are hoping we can take off the table the disclosure issues we raised, if that's the case (depending on your production). We can coordinate after the 26th and perhaps do a letter saying issues related to disclosures are off the table but otherwise we need to persist in our motions.

Perhaps we could point out which portions of the briefs are moot instead of doing additional rounds of briefing.

We can meet and confer after the notices to see if portions of our briefs are moot.

The USAO agrees to 2/2 for the opposition.

USAO suggests writing letter that provides the calendar we are proposing to the Court, and that suggests we adjourn the current Daubert hearing scheduled for 1/23.

KL wants to wait until Monday so that we can see the production. USAO agrees.

KL notes that the Court's email told the parties that he wanted to address disclosure issues at Wednesday's hearing but that it did not replace the Daubert hearing scheduled for 1/23. We should consider whether in our submission we should say that the parties would be prepared to have that hearing adjourned, but leave it to the Court. The USAO agrees.

[2] The USAO raised a separate discovery issue:]

The USAO noted there is a separate discovery issue. When going back through their productions on data, they noticed that the defense has EMSX data from Archegos's side showing their trades. However, there is also a mirror production of EMSX data from Bloomberg that was produced pursuant to a search warrant and may have additional metadata about the trades. That came in two extremely large (7 and 6 GB) excel files. As best they can tell, it was not ingested into Relativity and they cannot confirm it was produced to the defense. They are planning on sending us those files by USAFX today. We will have them and can take a look and will see what we can about the trades.

They wanted to flag that for us so we know what it is when we get the production.

KL: We will check on our end. We will look into it, that does not sound like something that we have.

USAO: There may be more than two files that we see, because one vendor broke them out by ticker. The break outs are derivative files so we do not have to do that work, but it's the same data.

KL: You send it to us, we'll look into it on our end.